HOUSE OF REPRESENTATIVES STAFF ANALYSIS

	CS/CS/HB 529	Statewide Cable Television and Video Service Franchises
SPONSOR(S):	Traviesa and others	
TIED BILLS:		**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Jobs & Entrepreneurship Council	11 Y, 1 N, As CS	Cater	Thorn
2) Policy & Budget Council	27 Y, 3 N, As CS	Martin	Hansen
3)			
4)			
5)			

SUMMARY ANALYSIS

CS/CS/HB 529 establishes the authority to issue statewide cable and video franchises within the Department of State (DOS) and designates DOS as the state franchising authority. The bill removes local government authority to negotiate cable service franchises.

Generally, the bill:

- Provides definitions;
- Establishes application procedures for a state-issued certificate of franchise authority (certificate), including provisions that establish the circumstances under which a cable operator with an existing franchise with a municipality or county may terminate such franchise agreement and receive a state-issued franchise for its current franchise area;
- Requires certificateholders to update information every five years;
- Provides for application and processing fees, most of which are to be transferred to the Department of Agriculture;
- Prohibits the imposition of franchise fees by local governments, except those franchise fees already collected through the Communications Services Tax and permitting fees collected for the use of the right-of-way;
- Prohibits buildout requirements;
- Provides that the incumbent cable service provider must abide by customer service standards reasonably comparable to those in the Federal Communication Commission's (FCC's) rules until there are two or more cable service providers in the relevant service area;
- Provides guidelines for the number of public, educational, and government (PEG) channels to be provided in a certain area, including when a channel is considered substantially used;
- Prohibits municipalities or counties from discriminating against certificateholders for items such as access to rights-of-way, buildings, or property; terms of utility pole attachments; and the filing of certain documents with the municipality or county;
- Prohibits discrimination against subscribers based on race or income, and provides a process to address complaints related to discrimination;
- Provides that effective January 1, 2009, cable service quality complaints from municipalities and counties that currently have an office or department dedicated to responding to cable service quality complaints are to be handled by the Department of Agriculture and Consumer Services (DACS);
- Requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) and DACS to submit reports to the Legislature ;
- Requires rulemaking by DACS, as necessary.

The bill provides for automatic enrollment in Lifeline telecommunications service for eligible low income customers.

The bill repeals statutes related to a 2003 law increasing local phone rates and reducing intrastate long-distance rates. However, current rates obtained through this statute will remain in effect.

The bill amends statutes related to the Communications Services Tax (CST) and the use of rights-of-way to conform to this act. The bill also repeals the current cable franchising law in s. 166.046, F.S. There are no fiscal impacts related to the CST.

The Revenue Estimating Conference (REC) met on February 28, 2007 to consider this bill, and adopted an indeterminate negative impact on local governments' in-kind services now received from cable franchises. The REC also concluded that the value of the lost in-kind services would total at least $20 million statewide. This may be construed as a significant reduction in the authority that cities and counties have to raise revenues in the aggregate, which would be considered a local mandate. The fiscal impacts on state agencies are expected to be insignificant for FY 2007-08 such that the agencies will be able to absorb workload increases within existing resources. There are several concerns discussed in the full analysis below relating to impairment of contracts, home rule powers and some technical implementation concerns raised by the Department of State.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill establishes the authority to issue statewide cable and video franchises within the Department of State, and designates the Department of State as the state franchising authority. The bill removes local government authority to negotiate cable or video service franchises. Further, the bill requires the Department of Agriculture and Consumer Services to expeditiously handle cable service complaints.

Ensure Lower Taxes: The bill requires an application fee of $10,000 and a fee of $1,000 for processing updates of information every five years. The bill also requires filings with the Department of State to be accompanied by a fee equal to that required for filing articles of incorporation (currently $35).

Promote Personal Responsibility: The bill provides for automatic enrollment in Lifeline telecommunications service for low income consumers. However, the bill contains a provision for eligible persons to opt-out of automatic enrollment.

B. EFFECT OF PROPOSED CHANGES:

Background

1. Federal Law[1]

The current federal law related to the provision of cable service[2] is intended to achieve the following purposes:

(1) Establish a national policy concerning cable communications;
(2) Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
(3) Establish guidelines for the exercise of Federal, state, and local authority with respect to the regulation of cable systems;
(4) Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
(5) Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established in the federal law; and

[1] Much of the information on federal law concerning cable television came from the Federal Communication Commission's June 2000 Cable Television Information Bulletin. It is available at http://www.fcc.gov/mb/facts/csgen.html. (last visited March 14, 2007).
[2] 47 U.S.C. s. 521

(6) Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

Federal Cable Franchise Requirements

Under federal law, a local franchising authority (LFA) may award one or more franchises within its jurisdiction, except that it may not issue an exclusive franchise or unreasonably refuse to award an additional competitive franchise.[3] The franchise is to be construed to authorize the construction of a cable system over public rights-of-way and through easements, except that in using the easements the cable operator is required to ensure:

- The safety, functioning, and appearance of the property and the convenience and safety of others not adversely affected by the installation or construction of cable facilities;
- The cost of installation, construction, operation, or removal of such facilities by the cable operator or subscribers, or both; and
- The owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, and operation of facilities.

In awarding the franchise, the LFA:

- Shall allow the applicant's cable system reasonable time to be able to provide cable service to all households;
- May require adequate assurance that the cable operator will provide adequate PEG access channel capacity, facilities, or financial support;
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service; and
- Shall assure that access to cable service is not denied to a group of potential subscribers because of their economic status.

Federal law allows local franchise authorities to assess a franchise fee. The fee is not to exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.[4]

Federal law does not require persons who lawfully provided cable service without a franchise on July 1, 1984, to obtain a franchise, unless the LFA requires them to do so.

FCC Rulemaking

On December 20, 2006, the FCC adopted a *Report and Order and Further Notice of Proposed Rulemaking*, prohibiting franchising authorities from unreasonably refusing to award competitive franchises for provision cable service. In the *Order,* the FCC cited some examples of local franchising authorities unreasonably refusing to award competitive franchises, including drawn-out negotiations, unreasonable build-out requirements, unreasonable requests for "in-kind" payments in attempt to subvert the five percent cap on franchise fees, and unreasonable demands with respect to public, educational, and government access (PEG). The FCC determined that it is an unreasonable refusal to award a competitive franchise when:

- Franchise negotiations extend beyond certain time frames;
- The LFA requires an applicant to agree to unreasonable build-out requirements;

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[3] 47 U.S.C. s. 541

[4] 47 U.S.C. 542

- The LFA demands specified costs, fees, and other compensation, unless they count towards the five percent cap on franchise fees;
- The LFA denies an application based on a new entrant's refusal to undertake certain unreasonable obligations relating to PEG and institutional networks.

In its *Order*, the FCC proposed to preempt local laws, regulations, and requirements, including local level-playing-field provisions, to the extent such provisions impose greater restrictions than the FCC's rules.

In its *Order*, the FCC concluded that it does not have sufficient information to make a determination as to what is an "unreasonable refusal to award an additional competitive franchise" at the state level, with such things as statewide franchising decisions. Therefore, the *Order* addresses only franchising decisions made by county or municipal franchising authorities.

The FCC also adopted a *Further Notice of Proposed Rulemaking* seeking comment on how its findings should affect existing franchises. It tentatively concluded that the findings should apply to existing franchises when their franchises are renewed. The FCC requested comments on its statutory authority to take this action.[5]

The *Order* was released on March 5, 2007.[6] It is expected that the new rules will be challenged in federal court on the grounds that the new rules overstep the FCC's legal authority.[7]

2. State Law

In 1987, the Legislature enacted s. 166.046, F.S., providing minimum standards for cable television franchises. Section 166.046(2), F.S., provides that:

> 2) No municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a duly noticed public hearing, having considered:
> (a) The economic impact upon private property within the franchise area;
> (b) The public need for such franchise, if any;
> (c) The capacity of public rights-of-way to accommodate the cable system;
> (d) The present and future use of the public rights-of-way to be used by the cable system;
> (e) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
> (f) The financial ability of the franchise applicant to perform;
> (g) Other societal interests as are generally considered in cable television franchising; and
> (h) Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

Moreover, s. 166.046(3), F.S., provides that a municipality or county cannot grant any overlapping cable franchises on terms or conditions that are more favorable or less burdensome than existing franchises.

Cable service is taxed pursuant to the Communications Services Tax (CST) contained in ch. 202, F.S. Cable companies are subject to regulation for the use of rights-of-way under s. 337.401, F.S.

Franchise Agreements

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5 Federal Communications Commission, Press Release, *FCC adopts Rules to Ensure Reasonable Franchising Process for New Video Market Entrants*, December 20, 2006.
6 FCC Order No. FCC 06-180.
7 Dunbar, John. "Local Governments: FCC Not Playing Fair," *Associated Press*, January 28, 2007. Obtained from http://www.topix.net/content/ap/3762798474414742816105053963662419660426 (January 29, 2007).

In order to provide cable service in Florida, a cable company is required to obtain a franchise agreement from the LFA, which is either the municipality or the county. The local franchise agreements address issues such as rates, customer service standards, buildout, the number of PEG channels to be provided, support for PEG channels, use of rights-of-way, and service to government buildings.

Proposed Changes

1. Short Title

The bill creates the "Consumer Choice Act of 2007."

2. Statewide Cable Franchises

Department of State Authority to Issue Statewide Cable and Video Franchises

The bill creates s. 610.102, F.S., designating the Department of State (DOS) as the franchise authority for state-issued franchises for cable or video service. Additionally, municipalities and counties are prohibited from granting new franchises for cable or video service within their respective jurisdictions.

Definitions

The bill creates s. 610.103, F.S., which provides the following definitions to be used in ss. 610.102-610.116, F.S.:

Cable Service-(a) The one-way transmission to subscribers of video programming or any other programming service; (b) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service.

Cable Service Provider-a person that provides cable service over a cable system.

Cable System-a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community but such term does not include:

a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
b) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;
c) A facility that serves subscribers without using any public right-of-way;[8]
d) A facility of a common carrier[9] that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et seq,[10] except that the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent they are used in the transmission of video programming directly to subscribers, unless the extent of such uses is solely to provide interactive on-demand services, in which case it is not a cable system; or
e) Any facility of any electric utility used solely for operating its electric utility system.

Certificateholder-a cable or video service provider that has been issued and holds a certificate of franchise authority from the department.

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[8] E.g., satellite service
[9] Federal law defines a "common carrier" or "carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except when reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." 47 U.S.C.A. s. 153(10).
[10] 47 U.S.C. s. 207 et seq. are the federal common carrier regulations for telephone companies.

Department-the Department of State.

Franchise-an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, to construct and operate a cable system or video service provider network facilities in the public right of way.

Franchise Authority-any governmental entity empowered by federal, state, or local law to grant a franchise.

Incumbent cable service provider-the cable service provider serving the largest number of cable subscribers in a particular municipal or county franchise area on July 1, 2007.

Public right-of-way-the area on, below, or above a public roadway, highway, street, sidewalk, alley, or waterway, including, without limitation, a municipal, county, state, district, or other public roadway, highway, street, sidewalk, alley, or waterway.

Video Programming-programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. s. 522(20).[11]

Video Service-video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. s. 332(d),[12] video programming provided via a cable service or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail, or other services offered over the Internet.

Video Service Provider-A video programming distributor that distributes video programming service through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology. This term does not include a cable service provider.

State Authorization to Provide Cable or Video Service.

The bill creates s. 610.104, F.S., outlining the procedures and requirements associated with applying to the DOS for a state-issued certificate of franchise authority. It provides that after July 1, 2007, any person or entity seeking to provide cable or video service is required to file an application for a state issued certificate with DOS. Any entity or person providing cable or video service under an unexpired franchise agreement with a municipality or county as of July 1, 2007, is not required to obtain such a certificate to continue providing service in such municipality or county until the franchise agreement expires, except in the following circumstances:

(1) A cable or video service provider who is not defined as an incumbent and who provides cable or video service to less than 40% of the total cable or video service subscribers in the franchise area, beginning July 1, 2007, may elect to terminate an existing franchise and seek a state-issued certificate of franchise authority by providing written notice to the Secretary of State and the affected municipality or county after July 1, 2007. In such case, the franchise with the municipality or county is terminated on the date the Department of State issues the state-issued certificate of franchise authority. It is unclear

[11] 47 U.S.C. 522(20), defines "video programming" as programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
[12] 47 U.S.C. s. 332(d), defines "commercial mobile service" as "any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission." (47 U.S.C.A. s. 332).

how the 40 percent was established, and no methodology is included for determining the service area percentage or the entity that performs the calculation.

(2) An incumbent cable service provider may elect to terminate an existing municipal or county franchise agreement and apply for a state-issued certificate of franchise authority with respect to such municipality or county if another cable or video service provider has been granted a state-issued certificate of franchise authority for a service area located in whole or in part within the service area covered by the existing municipal or county franchise and such certificateholder has commenced providing service in such area. The incumbent cable service provider is required to provide, at the time of filing its application for a state-issued certificate of franchise authority, written notice of its intent to terminate its existing franchise to DOS and the affected municipality or county. The municipal or county franchise is terminated on the date the DOS issues the state-issued certificate of franchise authority to provide service in such municipality or county franchise area to the incumbent cable service provider. Concern has been raised as to whether this provision creates an unconstitutional impairment of contracts.

An entity or person providing cable or video service may seek authorization from the department to provide service in areas where the entity or person currently does not have an existing franchise agreement as of July 1, 2007.

Each applicant is required to submit, to DOS, an application containing the following:

- The official name of the cable or video service provider;
- The street address of the principal place of business of the cable or video service provider;
- The federal employer identification number or the Department of State's document number;
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person to whom questions or concerns may be addressed; and
- A duly executed affidavit signed by an officer, partner, owner, or managing member affirming and containing;

    - That the applicant is fully qualified under the provisions of this chapter to file an application and affidavit for a certificate of franchise authority;
    - That the applicant has filed or will timely file with the FCC all forms required by that agency in advance of offering cable or video service in this state;
    - That the applicant agrees to comply with all applicable federal and state laws and regulations, to the extent that such state laws and rules are not in conflict with or superseded by the provisions of this chapter or other applicable state law;
    - That the applicant agrees to comply with all lawful state laws and rules and municipal and county ordinances regarding the placement and maintenance of communications facilities in the public rights-of-way that are generally applicable to providers of communications services in accordance with s. 337.401, F.S.;
    - A description of the service area for which the applicant seeks the certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries;
    - The location of the applicant's principal place of business and the names of the applicant's principal executive officers;
    - That the applicant will file with the department a notice of commencement of service within five days after first providing service in each service area; and
    - A statement affirming that the applicant will notify DOS of any change of address or contact person.

DOS is required to notify an applicant, within 10 business days after submission of the affidavit, as to whether or not the affidavit is complete. Before the 15th day after receiving a completed affidavit submitted by the applicant as signed by an officer or general partner, DOS is required to issue a certificate of franchise authority to offer cable or video service. If the DOS denies the application, it must specify the particular reasons that the application is denied and permit the applicant to amend the application to cure any deficiency. DOS must act upon an amended application within 10 business days. If the DOS does not act on the application within 30 business days of receipt, the application shall be deemed approved without further action. If DOS denies an application, the applicant may challenge the denial in a court of competent jurisdiction through a petition for mandamus.[13]

The certificate of franchise authority issued by the DOS must contain:

- The name of the certificateholder and its identification number;
- A grant of authority to provide cable or video service as requested in the application;
- A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters;
- A statement that the grant of authority is subject to lawful operation of the cable and video service by the applicant or its successor in interest;
- A statement that describes the service area for which this certificate of authority applies; and
- A statement that includes the effective date of the commencement of this authority.

If a certificateholder seeks to include additional service areas in its current certificate, it is required to file notice with DOS to reflect the new service area or areas. The certificateholder is also required to file with DOS a notice of commencement of service within five business days after first providing service in each such additional area.

Federal law allows franchise agreements to require the LFA to approve the sale or transfer of a cable system and gives the LFA 120 days to act upon the request for approval. Absent such action, the approval is deemed granted.[14] The bill provides that the certificate of franchise authority issued by DOS is fully transferable to any successor in interest to the applicant to which the certificate was originally granted. However, a notice of transfer must be filed with DOS and the relevant municipality or county within 14 business days following the completion of the transfer.

The certificate of franchise authority issued by DOS may be terminated by the cable or video service provider by submitting notice to DOS.

Applications are required to be accompanied by a one-time fee of $10,000.

Beginning five years after a certificateholder's initial certificate is issued and every five years thereafter, the certificateholder is required to update the information contained in its original application. When the update is filed, the certificateholder is required to pay a $1,000 processing fee. If a certificateholder fails to file the updated information and pay the processing fee on the five year anniversary dates, its certificate of franchise authority shall be subject to cancellation if, upon notice given at its last address on file with DOS, the certificateholder fails to file the updated information and pay the processing fee within 30 days of the date the notice was mailed.

The certificateholder's application and processing fees are to be paid to DOS for deposit into its Operations Trust Fund for immediate transfer by the Chief Financial Officer (CFO) to the Department of Agriculture and Consumer Service's (DACS) General Inspections Trust Fund. DACS must maintain a separate account within the General Inspections Trust Fund to distinguish cable franchise revenues from other funds.

The application, any amendments to the certificate, or information updates must be accompanied by a fee equal to that for filing articles of incorporation. This fee is currently $35.[15]

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[13] "Mandamus" is "a writ which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so." mandamus. (n.d.) The People's Law Dictionary. (2005). Retrieved February 1, 2007, from http://legal-dictionary.thefreedictionary.com/Mandamus

[14] 47 U.S.C. s. 537

[15] S. 607.0122(1), F.S.

The bill provides that, since the function of DOS is ministerial in nature, DOS will accept the information contained in the application at face value. The applicant is required to ensure continued compliance with all applicable business information, registration, and taxation statutes.

Eligibility for State-Issued Franchises

The bill creates s. 610.105, F.S., establishing, in more detail, eligibility for a state-issued franchise. Section 610.105(1), F.S., provides that, except as otherwise provided, an incumbent cable service provider with an existing, unexpired cable franchise with respect to a municipality or county as of July 1, 2007, is not eligible for a state-issued certificate of franchise authority until the franchise expires.

For purposes of this section, an incumbent cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or county if any affiliate or successor entity of the cable service provider has or had an unexpired franchise agreement granted by that specific municipality or county as of July 1, 2007. Also, for purposes of this section, "affiliate or successor entity" refers to an entity receiving, obtaining, or operating under a franchise that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with the cable service provider.

Section 610.105(4), F.S., provides that an incumbent cable service provider may elect to terminate an existing municipal or county franchise agreement and apply for a state-issued certificate of franchise authority with respect to such municipality or county if another cable or video service provider has been granted a state-issued certificate of franchise authority for a service area located in whole or in part within the service area covered by the existing municipal or county franchise and such certificateholder has commenced providing service in such area.

Franchise Fees

As previously stated, federal law allows local franchise authorities to assess a franchise fee which may not exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.

The bill creates s. 610.106, F.S., providing that, except as otherwise provided in this chapter, DOS is prohibited from imposing any taxes, fees, charges, or other impositions on a cable or video service provider as a condition for the issuance of a state issued certificate of franchise authority. This section also prohibits municipalities or counties from imposing taxes, fees, charges, or other exactions on certificateholders doing business in the municipality or county, or otherwise, except such taxes, fees, charges, or other exactions permitted by the Communications Services Tax[16] and the use of the right-of-way.[17]

Chapter 202, F.S., creates the Communications Services Tax (CST). Pursuant to ch. 202, F.S., cable service is subject to a state CST of 9.17 percent. Municipalities and counties may also assess a local CST, subject to provisions of ch. 202, F.S. Section 337.401(6), F.S., allows municipalities and counties who levy the CST pursuant to ch. 202, F.S., to charge providers who maintain communications facilities on their roads and rights-of-way, but do not remit CST to the municipality or county (pass-through providers) to charge the pass-through provider a fee for the use of the right-of-way.

Buildout

[16] Ch. 202, F.S.
[17] S. 337.401(6), F.S.

As previously noted, federal law provides that in awarding a franchise, the local franchising authority is required to allow the applicant cable system a reasonable amount of time to become capable of providing cable service to all households in the franchise area.[18]

“Buildout” is a requirement in a franchise agreement that requires the cable service provider to provide service to customers in the local franchise area within a reasonable period of time. According to information provided by local governments, buildout requirements are designed to prevent cable operators from “cherry picking” markets and individual customers within a franchise area. Local governments also argue that buildout requirements let local governments discourage different levels of service in their franchise area.

However, a recent study on cable “build-out” rules concluded that while “build-out” requirements on new cable entrants are imposed “to assure that all constituents in the community receive the benefits of competition” that the opposite may be true. The study concluded that build-out requirements increase the costs and reduce the profits of prospective entrants, and result in less deployment, with new entrants bypassing entire communities. Essentially, the study concluded “a build-out rule designed to prevent ‘economic red-lining’ *within a community* essentially imposes a different form of ‘economic red-lining’ *between communities.”*[19]

The bill creates s. 610.107, F.S., which prohibits any franchising authority, state agency, or political subdivision from imposing any buildout, system construction, or service deployment requirements on a certificate holder.

Customer Service Standards

FCC rules[20] provide the following minimum cable service standards, which the local franchise authority may enforce with 90 days written notice to the cable provider:

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability--

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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[18] 47 U.S.C. s. 541(4)(A)

[19] *Phoenix Center Policy Paper Number 22: The Consumer Welfare Cost of Cable “Build-out Rules”*, Phoenix Center For Advanced Legal & Economic Public Policy Studies; January 2007, Third Release; p. 21 (emphasis in original). Available at: http://www.phoenix-center.org/pcpp/PCPP22_Third_Release.pdf (February 20, 2007).

[20] 47 C.F.R. s. 76.309(c)

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers--

(i) Refunds--Refund checks will be issued promptly, but no later than either--
(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
(B) The return of the equipment supplied by the cable operator if service is terminated.
(ii) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Currently, many cable franchise agreements and cable television ordinances include customer service provisions. In addition to the above requirements, there may be provisions concerning notice prior to construction and requiring employees in the field to carry photo identification.[21]

The bill creates s. 610.108, F.S., which requires incumbent cable service providers to comply with customers service requirements “reasonably comparable” to the federal standards until there are two or more providers offering service, excluding direct-to-home satellite service, in the incumbent service provider’s relevant service area. The term “reasonably comparable” is not defined in the bill.

The bill provides, beginning on July 1, 2009, for all providers of cable service in municipalities or counties that, as of January 1, 2007, have an office or department dedicated to responding to cable service quality complaints, all such complaints shall be handled by the Department of Agriculture and Consumer Services (DACS). Until that time, these complaints shall continue to be handled by the municipality or county. The bill provides that this provision shall not be construed to permit a municipality or county to impose customer service standards in conflict with this section. It appears that DACS already handles cable complaints that are not handled by counties and municipalities without consumer complaint departments for cable. Its website provides several links to entities that provide assistance regarding cable television complaints.[22]

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[21] Miami-Date County Consumer Services Department Brochure; *Cable Television Consumer Bill of Rights.*
[22] http://www.800helpfla.com/azguide_c.html

The bill requires DACS to receive service quality complaints from customers of a certificateholder and address them in an expeditious manner by assisting in the resolution of such complaint between the complainant and the certificateholder. The bill states that DACS shall adopt any procedural rules necessary to implement this section.

While the bill gives DACS the authority to assist consumers in resolving customer service issues with cable companies, the bill does not contain any enforcement provisions.

Public, Educational, and Governmental Access Channels

As noted above, local franchise authorities may require cable operators to set aside channels for public, educational, and governmental (PEG) use.[23] In addition, the local franchise authority may require cable operators to provide services, facilities, and equipment for the use of these channels. In general, cable operators are not permitted to control the content of programming on PEG channels, but they may impose non-content-based requirements, such as minimum production standards, and they may mandate equipment user training.

PEG channel capacity which is not used for its designated purpose may, with the local franchise authority's permission, be used by the cable operator to provide other services. Under certain conditions, a franchising authority may authorize the use of unused PEG channels to carry low power commercial television stations and local non-commercial educational television stations.

Based on a survey of city and county cable TV franchise administrators and coordinators conducted by the Legislative Office of Economic and Demographic Research (EDR), of the 69 responses where the city or county has one or more cable TV franchises in effect, 37 of the agreements required PEG channels and 27 required support for PEG channels. The survey's respondents with PEG channels had between one and twelve PEG channels (the average was 1.76). Several of the respondents also had PEG channels that were either inactive or available.[24]

The bill creates s. 610.109, F.S., relating to PEG channels. Section 610.109(1), F.S., provides that no later than 12 months after a request by a municipality or county within whose jurisdiction the certificateholder is providing cable or video service, the certificateholder must designate a sufficient amount of capacity on its network to allow the provision of PEG channels for noncommercial programming as set forth in this section, except that a holder of a state-issued certificate of authority is required to satisfy the PEG obligation as specified in this section upon issuance of such certificate for any service area covered by such certificate that is located within the service area that was covered by the cable provider's terminated franchise.

Section 610.109(2), F.S., provides that a certificateholder shall designate a sufficient amount of capacity on its network to allow the provision of a comparable number of PEG channels or capacity equivalent that a municipality or county has activated under the incumbent cable service provider's franchise agreement as of July 1, 2007. The bill provides that, for purposes of this section, a PEG channel is deemed activated if it is being used for PEG programming within the municipality for at least 10 hours per day.

If, as of July 1, 2007, a municipality or county did not have PEG channels activated under the incumbent cable service provider's franchise agreement, the bill provides that not later than 12 months following a request from a municipality or county within whose jurisdiction a certificateholder is providing cable or video service, the cable or video service provider shall furnish: (a) up to three PEG channels or capacity equivalent for a municipality or county with a population of at least 50,000, or (b) up to two PEG channels or capacity equivalent for a municipality or county with a population of less than 50,000.

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[23] 47 U.S.C. s. 531

[24] Survey results provided to House of Representative's Committee on Utilities & Telecommunications Staff by the Legislature's Office of Economic and Demographic Research on February 12, 2007.

Section 610.109(4), F.S., provides that if a PEG channel provided pursuant to this section is not used by the municipality or county for at least 10 hours a day, it shall no longer be made available to the municipality or county, but may be programmed at cable or video service provider's discretion. When the municipality or county can certify to the cable or video service provider a schedule for at least 10 hours of daily programming, the cable or video service provider shall restore the previously lost channel, but is under no obligation to carry it on a basic or analog tier.

Section 610.109(5), F.S., provides that if a municipality or county has not used the number of access channels or capacity equivalent to the number described above, access to additional channels or capacity shall be provided on 12 month's written notice if the municipality or county meets the following standard:

- If the municipality or county has one active PEG channel and wishes to activate one additional channel, the initial channel is considered to be substantially used when it is programmed for 12 hours each calendar day. At least 40 percent of the 12 hours of programming for each business day on average must be nonrepeat programming, which is the first three video videocastings of a program; and
- If the municipality or county is entitled to three PEG channels and has in service two active PEG channels, each of the two active channels shall be considered to be substantially used when 12 hours are programmed on each channel each calendar day and at least 50% of the twelve hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

Section 610.109(6), F.S., provides that the operation of any PEG channel or capacity equivalent is the responsibility of the municipality or county receiving the benefit of such channel or capacity equivalent, and a certificateholder is only responsible for the transmission of the channel's content. The certificateholder is responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

Section 610.109(7), F.S., provides that municipalities and counties are responsible for ensuring that all transmissions, content, or programming transmitted over a channel or facility by a certificateholder are provided or submitted to the cable service provider in a way that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in content by the provider, over the particular network of the cable or video service provider, which is comparable to the protocol utilized by the cable service provider to carry such content, including, at the providers option, the authority to carry contents beyond the jurisdictional boundaries of the municipality or county.

Section 610.109(8), F.S., provides that where technically feasible, the certificateholder and incumbent cable service provider are to use reasonable efforts to interconnect their networks to provide PEG programming. This interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The bill provides that certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of PEG channels.

Section 610.109(9), F.S., provides that a certificateholder is not required to interconnect or otherwise transmit PEG content that is branded with the identifying marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider.

Section 610.109(10), F.S., provides that a court of competent jurisdiction has the exclusive jurisdiction to enforce any requirements under this section.

Nondiscrimination by Municipality or County

The bill creates s. 610.112, F.S., which requires a municipality or county to allow a certificateholder to install, construct, and maintain a network within a public right-of-way and provide the certificateholder with open, comparable, nondiscriminatory, and competitively neutral access to the public right of way in accordance with the state law regulating the use of the right of way by utilities.[25] The use of a right-of-way by a certificateholder is nonexclusive.

The municipality or county also may not discriminate against a certificateholder regarding the authorization or placement of a network in a public right-of-way, access to buildings or other property, or the terms of utility pole attachments.

Limitation on Local Authority

The bill creates s. 610.113, F.S., which prohibits a municipality or county from imposing additional requirements, except those expressly permitted by this chapter, on certificateholders, including financial, operational, and administrative requirements. A municipality or county may not impose on a certificateholder requirements for:

- Having business offices located in the municipality or county;
- Filing reports and documents with the municipality or county that are not required by state or federal law and not related to the use of the public right-of way;
- The inspection of a certificateholder's business records; or
- The approval of transfers of ownership or control. (The municipality or county may require a notice of transfer within a reasonable time.)

The municipality or county may require a permit for a certificateholder to place and maintain facilities in or on a public right-of-way. The permit may require the permitholder, at its own expense, to be responsible for any damage resulting from the issuance of a permit, and for restoring the public right-of-way to its original condition before the facilities were installed. The terms of the permits shall be consistent with construction permits issued to other providers of communications services placing or maintaining facilities in a public right-of-way.

Discrimination Prohibited

The bill creates s. 610.114, F.S, which prohibits a certificateholder from denying access to service ("redlining") to any group of potential residential subscribers because of the race or income of residents in the local area where such group resides, which conforms to federal law.[26] Enforcement may be sought by initiating a proceeding with DACS pursuant to its powers of processing complaints in s. 570.544, F.S. Section 570.544(3), F.S., reads in part:

> [T]he Division of Consumer Services shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit them to that agency most directly concerned in order that the complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the Division of Consumer Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

The bill provides that any request for enforcement should contain a clear statement of the facts and information upon which the claim is based. DACS must provide this information to the appropriate

[25] S. 337.401, F.S.
[26] 47 U.S.C. s. 541(a)(3)

certificateholder, including any supporting documents. The certificateholder has 60 days to provide a response to DACS and the complainant.

If the complainant is not satisfied with the response, DACS shall engage in nonbinding mediation between the affected parties. If mediation does not resolve the matter, an affected party may file a complaint with a court of competent jurisdiction; however, a person may not file an action in court without having participated in a mediation by DACS. If a court finds that a certificateholder is in material noncompliance with this section, the certificateholder shall have a reasonable period of time, as specified by the court, to cure such noncompliance. The court may also award reasonable costs and attorneys fees to the person seeking enforcement.

The bill provides that in determining whether a certificateholder has violated the above provision, cost, distance, and technological or commercial limitations shall be taken into account. It may not be considered a violation to use an alternative technology that provides comparable content, service, and functionality. In addition, the inability to serve an end user due to lack of access to a building or property is not considered a violation. The bill provides that this section is not to be construed to authorize any buildout requirements. DACS is required to adopt the procedural rules necessary to implement this section.

Compliance

The bill creates s. 610.115, F.S., which provides that if a court of competent jurisdiction finds a certificateholder not to be in compliance with the requirements of ch. 610, F.S., the certificateholder shall have a reasonable amount of time, as specified by the court, to cure such noncompliance.

Impairment

The bill creates s. 610.116, F.S., addressing issues related to an incumbent cable services provider being required by court order to remain in its existing franchise agreement. It provides that if the incumbent cable service provider is required to operate under its existing franchise and is legally prevented by a court of competent jurisdiction from exercising its right to terminate its existing franchise pursuant to s. 610.105(4), F.S., any non-incumbent certificateholder providing cable or video service in whole or in part within the service area which is the subject of the incumbent cable service provider's franchise, is also required to comply, but only for the length of time that the court order remains in effect, with the following franchise terms and conditions as applicable to the incumbent cable service provider in the service area.

The non-incumbent certificateholder is required to pay the municipality or county the lesser of:

- Any prospective lump sum or recurring per subscriber funding obligations to support PEG channels, institutional networks, or other prospective franchise-required monetary grants related to PEG facilities and capital costs. The prospective lump sum payment is to be made on an equivalent per subscriber basis calculated as follows:
    - The prospective funding obligations divided by the number of subscribers being served by the incumbent cable services provider at the time of payment, divided by the number of months remaining in the incumbent cable service provider's franchise equals the monthly per subscriber amount to be paid by the certificateholder until the expiration or termination of the incumbent cable service provider's franchise; or
    - An amount equal to one percent of the sales price as defined for the Communications Services Tax (CST)[27] for the taxable monthly retail sales of cable or video programming services the non-incumbent certificateholder received from subscribers in the affected municipality or county, applying all definitions and exemptions of ch. 202, F.S.[28]

[27] S. 202.11(13), F.S.
[28] Communications Services Tax

These payments will not be due until 45 days after the municipality or county notifies the respective providers and the Department of Revenue, in writing, of the appropriate per-subscriber amount. All payments made pursuant to these provisions shall be made as a part of the certificateholder's payment of CST, and all administrative provisions of the CST shall apply to payments made pursuant to this section.

Upon a municipality's or county's request, the non-incumbent certificateholder will provide within a reasonable period of time comparable, complimentary basic cable or video service offerings to public K-12 schools, public libraries, or government buildings as required in the incumbent's existing franchise, to the extent such buildings are located within 200 feet of the non-incumbent certificateholder's activated video distribution plant.

A non-incumbent certificateholder may designate that portion of the subscriber's bill attributable to any fee imposed pursuant to this section as a separate item on the bill and recover the amount from the subscriber.

These provisions do not alter the rights of a non-incumbent cable service or video service provider with respect to its service area. Any certificateholder providing cable service or video service in a service area covered by the terms of an existing cable franchise that is subject to a court or other proceeding challenging the ability of the incumbent cable service provider to exercise its legal right to terminate its existing cable franchise shall have a right to intervene in such proceeding.

Reports to the Legislature

The bill creates s. 610.117, F.S., requiring reports to the Legislature. In separate reports filed by December 1, 2009, and December 1, 2014, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) is required to submit a report to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives on the status of competition in the cable and video service industry. The report shall include, by municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic income groups.

By January 15, 2008, DACS is required to make recommendations to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificateholders. DOS shall provide to DACS, for inclusion in the report, the workload requirements for processing the certificates of franchise authority. DOS will also provide the number of applications filed for cable and video certificates of franchise authority, and the number of amendments received to the applications for certificates of franchise authority.

Severability

The bill creates s. 610.118, F.S., which provides that if any provision of ss. 610.102-610.117, F.S., or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.117, F.S., that can be given effect without the invalid provision or application, and to this end, the provisions of ss. 610.102-610.117 are severable.

<u>3. Communications Services Tax</u>

The bill amends two provisions relating to the Communications Services Tax. First, the bill creates s. 202.11(24), F.S., to provide a definition of "video service" for the purposes of the Communications Services

Tax. It defines "video service" as having the same meaning as that provided in s. 610.103, F.S., as set forth above.

The bill also amends Communications Services Tax provisions in ss. 202.24(2)(a) and (c), F.S., to conform to other provisions of the bill. The bill conforms s. 202.24(2)(a), F.S., by providing that municipalities and counties are prohibited from negotiating the terms and conditions related to franchise fees, the definition of gross revenues, or other definitions or methodologies related to the payment or assessment of franchise fess on providers of cable or video service.

Additionally, the bill conforms s. 202.24(2)(c), F.S., by providing that in-kind contributions allowed under federal law and imposed under an existing ordinance of franchise agreement for service provided prior to July 1, 2007, or permitted under ch. 610, F.S., are not subject to the prohibitions in s. 202.24(2), F.S.

<u>4. Use of Right-of-Way</u>

Federal cable law provides the following, concerning the use of rights-of-way in providing cable franchises; 47 U.S.C. 541(2) states:

> (2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure--
>
> > (A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;
> > (B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and
> > (C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

The bill amends s. 337.401(3), F.S., relating to the use of the right-of-way, to conform to the provisions of the bill. Section 337.401(3)(a)2, F.S., is repealed. This section relates to the awarding of cable franchises by municipalities and counties, including giving them the authority to negotiate terms and conditions related to cable service franchises including franchise fees and in-kind requirements.

Section 337.4061, F.S., is amended to make conforming changes, including definitions.

<u>5. Repeal of s. 166.046, F.S.</u>

The bill repeals s. 166.046, F.S., which is the current cable service franchise law that provides minimum standards for cable television franchises imposed upon municipalities and counties.

<u>6. Conforming Statutes</u>

The bill amends ss. 350.81(3)(a) and 364.0361, F.S., to conform to other statutory changes.

7. <u>Lifeline Telecommunications Service</u>

Lifeline is part of the federal Universal Service program[29] and is designed to enable low-income households to afford basic local telephone service. Under the Federal Communications Commission's (FCC) rules, there are four tiers of monthly federal Lifeline support, which are:

- A federal support credit of $6.50 for the federal subscriber line charge, which is available to all eligible subscribers.
- A federal support credit of $1.75 is available to all subscribers in states that have approved the credit. Florida has approved this tier of support.
- Federal support of one-half the amount of additional state support up to a maximum of $1.75 in federal support. Since Florida carriers provide an additional $3.50 credit to Lifeline customers' bills, Florida subscribers receive a monthly credit of up to $13.50 ($6.50 + $1.75 + $1.75 + $3.50). Since Florida does not have a state universal service fund, the $3.50 state credit is absorbed by the LEC providing service.
- An additional credit of up to $25 per month is available only to eligible subscribers living on tribal lands.[30]

In Florida, a customer's eligibility for Lifeline is determined by the customer's enrollment in any one of the following programs:

- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income
- Food Stamps
- Medicaid
- Federal Public Housing Assistance (Section 8)
- Low-Income Home Energy Assistance Plan (LIHEAP)
- National School Lunch Program's Free Lunch Program
- Bureau of Indian Affairs Programs.

Additionally, the Office of Public Council (OPC) certifies eligibility for Lifeline on income-based criteria, which, pursuant to s. 364.10(3)(a), F.S., is 135 percent of the federal poverty guidelines for Lifeline service.

The Public Service Commission (PSC), with its regulatory oversight over telecommunications companies, handles the state's oversight of Lifeline service. The PSC has recently engaged in some initiatives in order to increase Lifeline subscribership in Florida. These initiatives include a simplified certification process and an automated online application process. The PSC is also working with the Department of Children and Family Services (DCF)[31] to develop a process where potential customers certified through a DCF program will be placed on a list that is forwarded to the PSC, sorted by telephone company, and forwarded to the company for enrollment.[32] The PSC also has an open docket addressing a petition from OPC and the AARP requesting that the PSC order local exchange telecommunications companies to implement procedures with DCF to automatically enroll eligible customers in the Lifeline program.[33]

The bill amends s. 364.10(3)(h), F.S., to provide for automatic enrollment in Lifeline for customers who are determined eligible through a state program (e.g. Medicaid). Under the bill, if a state agency determines that a person is eligible for Lifeline service, the agency must act immediately to ensure that the person is automatically enrolled in Lifeline with the appropriate carrier eligible to offer Lifeline service. The agency must include an option for an eligible customer to choose not to subscribe to Lifeline service. The PSC is

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[29] In addition to Lifeline for low-income consumers, the Universal Service program also provides support for high cost areas, rural health care, and schools and libraries.
[30] Florida Public Service Commission *Report on the Number of Customers Subscribing to Lifeline Service and the Effectiveness of any Procedures to Promote Participation.*, December 2006. (*PSC Lifeline Report*)
[31] DCF is the only state agency in Florida currently determining eligibility for state programs that create automatic eligibility for Lifeline service.
[32] *PSC Lifeline Report*
[33] *PSC Lifeline Report;* PSC Docket No. 060677-TL.

required to adopt rules, as necessary, to create procedures to automatically enroll eligible customers in Lifeline service.

Under the bill, the PSC, DCF, and OPC shall enter into a memorandum of understanding establishing the respective duties of the PSC, DCF, and OPC with respect to automatic enrollment.

8. Rate Rebalancing

Chapter 364, F.S., delineates the scope and degree of the jurisdiction of the PSC relating to the regulatory oversight of telecommunication services in the state. Among other things, the chapter addresses the powers of the commission, the types of providers subject to PSC jurisdiction, and the nature and extent of that jurisdiction.

Prior to 1995, the PSC utilized rate base regulation or rate of return regulation as the method for regulating telephone utilities. This method of regulation established the revenues required by a telephone company needed to operate. Once the revenue requirement was determined, the PSC would then approve a rate structure and rates. The rates that the PSC established were designed to afford an opportunity for the telephone company to earn a reasonable rate of return.

In 1995, the Legislature rewrote ch. 364, F.S., in order to open the local telecommunications market to competition.[34] This legislation primarily did two things. First, it found that competition for the provision of local exchange service to be in the public interest. Through the legislative findings outlined in s. 364.01, F.S., the local exchange market was opened to competition effective January 1, 1996. To achieve those ends, the PSC was required to certificate new local exchange service providers and impose the necessary standards to ensure consumer protection without impeding competition. Additionally, it allowed existing local exchange telecommunications companies (LECs) to elect price regulation, rather than rate of return regulation, effective January 1, 1996, or when an alternative local exchange telecommunications company (ALEC)[35] was certified to provide service in a LEC's territory, whichever was later.[36]

In 2003, the Legislature passed the Tele-Competition Innovation and Infrastructure Act[37] (2003 Act) in order to reach full competitive market enhancement. The 2003 Act allowed the the LECs (over 1 million access lines), upon PSC approval to simultaneously raise basic service prices, dollar for dollar, to offset the decrease in revenue they would experience from reductions in intrastate access fees.[38] The PSC has approved petitions pursuant to this statute,[39] and some of the associated rate increases have gone into effect.

The bill repeals s. 364.164, F.S., which provided large LECs the ability to raise their basic local service rates, and offset the decrease in revenues with a reduction in intrastate access fees. The bill also repeals ss. 364.051(6) through (8), F.S., providing that once their intrastate access rates reached parity with their interstate access rates, the company could petition the PSC to be regulated in the same manner as competitive providers.

The bill amends s. 364.163 to delete provisions requiring long-distance telephone companies to pass the reduction in access charges it pays to local telecommunications companies on to its customers. The bill provides that the switched network access service rates in effect immediately prior to July 1, 2007, are to

[34] Ch. 95-403, L.O.F.
[35] Alternative Local Exchange Companies (ALECs) were changed to Competitive Local Exchange Companies (CLECs) in 2003. See ch. 2003-32, L.O.F.
[36] S. 364.051, F.S.
[37] Ch. 2003-32, L.O.F.
[38] The PSC has allowed BellSouth, Sprint, and Verizon to do this, but rates changes are stayed pending appeal to the Florida Supreme Court.
[39] PSC Order Nos. PSC-03-1469-FOF-TL and PSC-04-0456-FOF-TL.

remain capped at that level until July 1, 2010. Interexchange telecommunications companies cannot institute any intrastate connection fee or any similarly named fee.

The bill creates s. 364.385(4), F.S., providing that the rates and charges for basic local telecommunications service and network access service approved by the PSC in accordance with s. 364.164, F.S. which are in effect immediately prior to July 1, 2007, shall remain in effect and may not be changed after the effective date of this act, except in accordance with other provisions of law relating to telecommunications rates.[40]

9. Effective Date

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1	Provides a short title.
Section 2	Creates s. 202.11(24), F.S., providing a definition for “video service”.
Section 3	Amends ss. 202.24(2)(a) and (c), F.S., relating to the limitations on local taxes and fees imposed on the dealers of communications services.
Section 4	Amends ss. 337.401(3)(a), (b), (e), and (f), F.S., relating to the use of right-of-way for utilities subject to regulation; permit, fees.
Section 5	Amends s. 337.4061, F.S., relating to definitions; unlawful use of state maintained road right of way by nonfranchised cable and video services.
Section 6	Creates ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, 610.117, and 610.118 F.S., establishing a statewide cable and video franchising authority.
Section 7	Amends s. 350.81(3)(a), F.S., relating to communications services offered by governmental entities.
Section 8	Amends s. 364.0361, F.S., relating to local government authority, nondiscriminatory exercise.
Section 9	Repeals s. 364.051(6), (7), and (8), F.S., relating to price regulation.
Section 10	Amends s. 364.10, relating to Lifeline service.
Section 11	Amends s. 364.163, F.S., relating to network access services.
Section 12	Amends s. 364.385, F.S., relating to savings clauses.
Section 13	Repeals ss. 166.046 and 364.164, F.S., relating to cable television franchises and competitive market enhancement.
Section 14	This act shall take effect upon becoming law.

[40] Section. 364.051,F,.S., allows service rates to increase once in a 12-month period by the rate of inflation less 1 percent, and 364.163, F.S., addresses fees local companies charge intrastate long-distance companies to access their networks.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill requires a one-time application fee of $10,000 to accompany an application for a state-issued certificate of franchise authority. The bill also requires a processing fee of $1,000 to be paid by the certificateholder every five years when filing an update to its original application. Additionally, the application, any amendments to the certificate, or information updates must be accompanied by a fee equal to that for filing articles of incorporation. This filing fee is currently $35.[41]

2. Expenditures:

   In 2006, Texas adopted a similar application and certification process as contemplated in this bill. Since passage of the Texas legislation, 38 active cable and video franchises have been certified to date. Based on a comparison of current population demographics between Florida and Texas, it appears that Florida may be in a position to experience similar marketplace dynamics for the certification of cable and video franchises if this bill were to become law. Based on information from the Public Utility Commission of Texas, which acts as the statewide cable and video franchising authority in that state, one staff member has handled the workload associated with the cable and video franchise application and certification process.

   The Department of State indicated on March 1, 2007 that the DOS responsibilities under this bill will be handled within existing resources.

   According to DACS, it currently employs 16 FTE and 4 part-time positions (20 hours per week) on its consumer hotline to handle approximately 325,000 phone calls per year.

   This bill provides for counties and municipalities with dedicated staff to continue to handle complaints until July 1, 2009. The counties and municipalities that operate consumer complaint hotlines accept calls and complaints for a wide range of consumer issues, not just limited to cable television. Therefore, it is very unlikely that local consumer service departments will terminate staff or reduce operations due to DACS receiving calls under this bill.

   Based on this information and the fact that DACS currently handles cable complaints for counties and municipalities without consumer complaint departments, there may be no need for additional funding prior to July 1, 2009. However, on March 8, 2007, DACS submitted a revised fiscal analysis of this bill which states, in part:

   > "The regulation and handling of consumer calls and complaints will shift from local governments to the state. Although the bill allows counties/municipalities with an office or department dedicated to cable service complaints to continue receiving these complaints until July 1, 2009, DACS will likely receive a significant number of complaints from residents in counties/municipalities without consumer complaint offices/departments, because based on our survey only a small number of these type offices currently exist."

   The DACS analysis estimated that 8 additional staff would be needed during FY 2007-08, phased-in from July 1, 2007 through April 1, 2008 at a cost of $477,381 to handle as many as 35,000 additional calls and 11,500 additional written complaints per year.

[41] S. 607.0122(1), F.S.

The DACS analysis is predicated on the assumption that consumer awareness of the new legislation will cause a significant increase in complaint calls received by DACS even before July 1, 2009. Available information, though limited, does not support this assumption. For instance, the Miami-Dade County Consumer Services Department reported in a January 2, 2007, news release that the total number of complaints received in 2006 for cable television was 670. In addition, the Palm Beach County Office of Public Information's Cable Television Office receives cable television complaints from unincorporated areas and reported only 137 registered cable television complaints from October 1, 2005, to September 30, 2006. The bill requires DACS to provide a report to the Legislature by January 15, 2008, regarding the workload and staffing requirements related to consumer complaints related to cable and video certificateholders. Should that report justify the need for additional staffing in DACS, the appropriations could be provided during the 2008 regular legislative session. In addition, the bill provides that all of the $10,000 application fees and $1,000 processing fees collected by the Department of State are to be transferred to the Department of Agriculture. While the amount of these revenues is indeterminate, they will provide a source of funding for any increased workload incurred by the Department of Agriculture.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   According to local governments, they could potentially lose tens of millions of dollars in capital grants, facilities, and services that cable operators currently provide under franchise agreements. Federal law allows local governments to negotiate numerous benefits from cable operators, including PEG channels provided at no charge, free installation and service to government buildings, free or advantageously priced institutional networks and capital grants. While these benefits are permitted by federal law, the bill would eliminate local governments' authority to negotiate for them.

   The Revenue Estimating Conference (REC) met on February 28, 2007 to consider this bill, and adopted an indeterminate negative impact on local governments' in-kind services now received from cable franchises. The REC also concluded that the value of the lost in-kind services would total at least $20 million statewide.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Current law requires an entity that wishes to provide cable or video service to obtain a franchise from each individual municipality or county where it wishes to provide service; creating expenses in obtaining each of these agreements. The bill provides that instead of obtaining a cable or video franchise from each municipality or county where it wishes to provide service, an entity will only need to obtain a state-issued certificate of franchise authority at a cost of $10,000 for the entire state. This process could potentially save an applicant thousands of dollars in costs associated with obtaining cable and video service franchises.

Consumers may also see the benefit of lower prices for cable service as a result of this bill. A survey of cable competition in Texas concluded that "[a]fter only a few months of cable TV and video competition in Texas, consumers who switch [providers] are saving about $270 each year." In addition, those consumers who are staying with their original cable provider are saving money with new discount offers.[42]

Studies on the price elasticity of demand for cable television show that with a drop in prices, there is a proportionate increase in demand, creating "a net increase in cable TV and video revenues." A survey of cable competition estimated "that cable and video revenues have increased approximately 3.5% in the competitive portions of communities in the study area."[43]

However, cable competition may not reduce prices in all cases. A recent *Washington Post* article indicates that the cable rates for its largest provider are increasing in Montgomery County, Maryland, even though it has two competitors in the region. The company's officials say that the increase is due to its costs for such things as "adding video titles and improving customer service." However, the companies may be competing over bundled services, since all three providers offer "packages of phone, Internet, and cable television service."[44]

The bill requires the establishment of procedures that would allow eligible customers to be automatically enrolled in the Lifeline program. These provisions will provide an economic benefit for those customers through reduced charges for telephone service.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill removes the ability of cities and counties to negotiate certain in-kind benefits associated with cable and video franchise agreements. This provision of the bill may decrease the amount of revenues received by cities and counties. If there is a decrease in revenue, such decrease may be construed as a reduction in the authority that cities and counties have to raise revenues in the aggregate.

If a bill reduces the authority of cities and counties to raise revenues in the aggregate, then it must be passed by two-thirds vote of the membership in each house. Since there is doubt as to whether the bill could be construed as a mandate, it is advisable that the bill be passed by a two-thirds vote of the membership in each house.

2. Other:

Impairment of Contracts

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[42] *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas;* The American Consumer Institute; March 2, 2006, p. 18. Available at: http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf (February 20, 2007).

[43] *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas;* The American Consumer Institute; March 2, 2006, p. 17-18. Available at: http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf (February 20, 2007).

[44] *Cable Ear Fails to Offer Rate Relief in Montgomery,* Washington Post, February 18, 2007, p. C11; Available at: http://www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701334_pf.html

Provisions of the bill allow cable operators to unilaterally terminate their existing franchise agreements with municipalities and counties if certain conditions are met. It has been argued that these provisions may create an unconstitutional impairment of contracts under the United States Constitution or the Florida Constitution. However, another provision of the bill provides for the non-incumbent being responsible for the financial obligations for the current franchises, if a court order requires the incumbent to stay in the existing franchise instead of providing service under a state issued certificate. Staff was provided much of the following legal analysis by the proponents and the opponents of the bill.

<u>Local Government Authority to Establish Cable Television Franchises</u>

Among the things to consider in determining whether or not provisions in the bill create an unconstitutional impairment of contracts is the source of municipalities' and counties' authority to issue cable franchises.

An argument was raised that because the state granted local governments the authority to grant cable franchises, the state can take this authority away. The statutory definition of "franchising authority" is "any governmental entity empowered by federal, state, or local law to grant a franchise."[45] While s. 166.046(2), F.S., requires a public hearing and certain things to be considered prior to municipalities and counties granting a cable television franchise, there is nothing in the statute that declares the municipalities and counties as the LFAs under federal law.

Another view presented was that municipalities and counties receive their franchising authority from federal law. Federal law generally prohibits cable operators from providing cable service without a franchise.[46] However, nothing in federal or state law specifically declares that municipalities and counties are the franchising authority for the provision of cable service. Since neither the federal nor state governments have assumed the role of issuing cable franchises, it has fallen on the municipalities and counties to become the LFAs.

<u>Local Government Standing to Challenge a State Statute</u>

Another question raised is whether the municipalities and counties would have standing to challenge the constitutionality of a state statute.

It has been argued that case law well establishes that subordinates of a state do not have standing to challenge a state's action under the federal contracts clauses contained in Article I, Section 10 of the United States Constitution.[47] The United States Supreme Court has addressed the issue of municipal corporations as subordinates of the state, stating:

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation

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[45] SS. 166.046 and 337.4061, F.S.

[46] 47 U.S.C. s. 541(b)(1). There is an exception for persons lawfully providing cable service without a franchise prior to July 1, 1984, unless required to do so by the franchising authority.

[47] See *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933), and *American Association of People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1131 (C.D. Cal. 2004).

> upon it, constitutes a contract with the state within the meaning of the federal Constitution.[48]

Courts have also found that "[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator."[49]

While courts have determined that municipal corporations are creatures of the state, and that their powers are vested with the state, a federal appeals court stated that it was "unable to find a single federal case *holding* that a city cannot sue its parent state for impairing a contract between the city and a third party."[50]

It appears that the Florida Supreme Court has never directly addressed the issue of whether or not a city or county can challenge the constitutionality of a state statute.[51] Lower state courts have ruled that "[s]tate officers and agencies must presume legislation affecting their duties to be valid and *do not have standing to initiate litigation for the purpose of determining otherwise.*[52] However, a state agency or officer may defensively raise the constitutionality of a statute if litigation is brought against it.[53] There appears to be an exception if the law being challenged involves the disbursement of public funds.[54]

Florida courts have noted that "[t]he comptroller is one officer that has been allowed by Florida courts to initiate litigation in his official capacity seeking to establish the unconstitutionality of a statute."[55] It has also been recognized that the attorney general may, in limited circumstances, initiate litigation to challenge the constitutionality of legislation.[56]

In a 1963 case, the City of Plantation challenged the constitutionality of a statute authorizing the Florida Railroad and Public Utilities Commission (now the Florida Public Service Commission) to regulate rates charged by water and sewer companies, arguing that the statute impaired the obligations of a franchise agreement between the city and the utility company under which the city reserved the power to regulate water and sewer rates. In that case, the Florida Supreme Court stated:

> If the agreement between the parties were a private arrangement between individuals that did not involve a restriction upon the state's police power, the contentions of the appellant would be sound. There is no doubt that by conveying to the state Utilities Commission the power to regulate rates, the Legislature pre-empted the pre-existing authority which the City had reserved by the franchise agreement. Nevertheless, the

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48 *City of Pawhuska v. Pawhuska Oil & Gas Co.* 250 U.S. 394, 397-398, 39 S.Ct. 526-528 (U.S.1919), quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178, 28 S.Ct. 40, 46 (U.S.1907)
49 See *Metropolitan Development and Housing Agency v. South Central Bell Tel. Co.* 562 S.W.2d 438, 444 (Tenn.App. 1977), citing *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933).
50 See *City of Charleston v. Public Service Commission of West Virginia*, 57 F.3d 385, 389-390 (4th Cir. 1995) (emphasis in original).
51 When the question "Does a county have standing to challenge by a declaratory action the constitutionality of a statute or rule which indirectly requires the county to expand public funds in order to comply with the mandates of such statute or rule, and further provides for a potential loss of revenue to the county in the event of noncompliance?" was certified to the Florida Supreme Court in 1995, the court found that a stipulated settlement agreement resolved the dispute and expressed no opinion as to the certified questions. *Santa Rosa County v. Administration Commission, Division of Administrative Hearings,* 661 So.2d 1190, 1193 (Fla. 1995).
52 See *Florida Department of Agriculture and Consumer Services v. Miami-Dade County*, 790 So.2d 555, 558 (Fla. 3d DCA 2001), quoting *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982).
53 See *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982).
54 See *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002).
55 See *Dickinson v. Stone*, 251 So.2d 268 (Fla.1971); *Green v. City of Pensacola*, 108 So.2d 897 (Fla. 1st DCA 1959), *aff'd*, 126 So.2d 566 (Fla.1961).
56 See *Department of Education v. Lewis* 416 So.2d 455, 458-459 (Fla., 1982) citing, *Department of Administration v. Horne*, 269 So.2d 659 (Fla.1972); *State ex rel. Landis v. S. H. Kress & Co.*, 115 Fla. 189, 155 So. 823 (1934); *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 39 So. 929 (1905)."

> constitutional rule against impairment does not apply to a contract of the nature now under consideration. This is so because a municipality cannot foreclose the exercise of the State's police power by such an arrangement.[57]

However, it should be noted that at that time of the court's opinion Article XVI, Section 30 of the Florida Constitution gave "the Legislature full power to regulate charges and services performed by public utilities." The court determined a franchise agreement such as the one under dispute in this case "is presumed to have been made with the full knowledge of the inherent reserved power of the State to alter the contract regarding rates at such time as the Legislature deems it appropriate to assert the power under the Constitution."[58] No similar constitutional provision appears to exist that explicitly grants the Legislature the authority regulate or issue cable franchises.

Contract Impairment

Concern was raised that instead of challenging the constitutionality of the bill through a declaratory action, a municipality or county may more likely sue a franchisee who terminates its franchise under the provisions of this statute for breach of contract. While the franchisee may argue that this new statute allows it to terminate its franchise agreement with the municipality or county, the municipality or county may argue that the statute creates an unconstitutional impairment of contracts.

Concerning the impairment of private contracts, the Florida Supreme Court has determined that "[a]ny conduct on the part of the legislature that detracts in any way from the value of a contract is inhibited by the Constitution."[59] Florida courts have held that the following factors are factors that a court might consider in a test to balance the nature of the impairment with the importance of the state objective:

> (a) Was the law enacted to deal with a broad generalized economic or social problem?
> (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
> (c) Does the law effect a temporary alteration of the contractual relationship of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships-irrevocably and retroactively?[60]

Florida courts have also established that "[v]irtually no degree of contract impairment has been tolerated in this state."[61] In determining how much impairment it is willing to tolerate, the Florida Supreme Court has stated:

> [W]e must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree that is necessary to achieve that objective.[62]

It is important to note that the cases cited above relate to contracts between private parties. There is some case law concerning the Legislature's authority to impair the state's own contracts. The Florida Supreme Court has ruled that once the Legislature has accepted and funded a collective bargaining agreement, "the

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[57] See *City of Plantation v. Utilities Operating Co*. 156 So.2d 842, 843 (Fla.1963), citing *Puget Sound Traction Light & Power Co. v. Reynolds*, 244 U.S. 574, 37 S.Ct. 705, 61 L.Ed. 1325 (1917), emphasis added.
[58] See *City of Plantation v. Utilities Operating Co.* 156 So.2d 842, 843 (Fla.1963).
[59] See *Dewberry v. Auto-Owners Insurance Company*, 363 So.2d 1077, 1080 (Fla. 1978).
[60] See *Yellow Cab Co. of Dade County v. Dade County* 412 So.2d 395, 396 (Fla.App. 3 Dist., 1982), citing *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 779(Fla. 1979).
[61] See *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d. 557, 559 (Fla. 1975).
[62] See *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 780 (Fla. 1979).

state and all its organs are bound by that agreement under the principles of contract law."[63] In that case, after ratifying a collective bargaining agreement in response to a fiscal emergency, the Legislature postponed, then terminated a scheduled pay-raise. The Supreme Court determined that while the Legislature has the authority to reduce an appropriation related to a collective bargaining agreement, it can only do so when it demonstrates a compelling state interest. However, before exercising this authority:

> [T]he legislature must demonstrate no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, the legislature must demonstrate that funds are from no other possible reasonable source.[64]

In the *Chiles* case, the state interest of the Legislature trying to remedy a $700 million budget shortfall, the Supreme Court determined that the budget shortfall was not sufficient reason for the state to impair the collective bargaining agreement.

However, in a case involving county ordinances prohibiting exclusive arrangements between hotels and taxicab companies, the court concluded that the interests of the county in encouraging free competition, providing passenger choice, and improving transportation efficiency far outweighed severity of impairment of private contracts and that the ordinances were reasonable and necessary exercises of the county commission's police power.[65]

If the courts have ruled that both a compelling state interest and no other remedy are required elements before the Legislature can impair the state's contracts, it could be argued that both elements are required before the Legislature could act in a manner that would impair the contract of a municipality or county.

Home Rule

Article VIII of the Florida Constitution gives municipalities and counties broad "home rule" power, which gives them the authority to enact an ordinance for any public purpose; however, state law prevails when there is a conflict between state law and local law.

Under home rule powers, municipalities and counties have established cable ordinances. These ordinances are often specific to the community and address demographics, buildout, PEG channels, safety, and customer services issues. The bill would remove a municipality or county's authority to establish such ordinances or similar cable franchise provisions.

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is required to adopt rules, as necessary, to implement its function related to customer service standards. It is also required to implement rules relating to its enforcement of discrimination provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOS, the bill presents some issues relating to the implementation of statewide franchising authority within DOS, as follows:

- It would take three to six months for DOS to set-up systems and procedures, and recruit and train staff prior to receiving any applications for franchise authority.

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[63] See *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993)
[64] See *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993)
[65] See *Yellow Cab Co. of Dade County v. Dade County* 412 So.2d 395 (Fla.App. 3 Dist., 1982)

- Section 610.104(2), F.S., provides that a cable or video service provider with an existing franchise with a municipality or county with less than 40 percent of the cable and video service subscribers in a given area, may elect to terminate its current franchise and obtain a state-issued franchise as of July 1, 2007. DOS states that there is no way for it to determine whether or not a specific applicant has less than 40 percent of the market without some sort of attestation.
- It is unclear what happens between the 15^{th} business day in s. 610.104(5), F.S., when DOS is required to issue the certificate of franchise authority and the 30^{th} business day in s. 610.104(6), F.S., when the certificate is deemed approved without any further action.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 22, 2007 the Jobs & Entrepreneurship Council adopted six amendments to the bill. The amendments do the following:

- Change the application fee to file from a maximum of $150 to a fixed fee of $10,000.
- Require certificateholders to file an update every five years, with a processing fee of $1,000.
- Specify the trust funds which the application and processing fees are to be deposited.
- Require that any applications, amendments, and updates must be accompanied by a fee equal to that for filing articles of incorporation pursuant to s. 607.0122(1), F.S.
- Clarify that except for the fees provided in this chapter, DOS is prohibited from charging additional fees related to cable or video franchising.
- Clarify that certificateholders may not deny access to service to a group of potential customers based on their race.
- Require permitholders to restore the right-of-way to its original condition before after work on the right-of-way.
- Require DACS to provide a report to the Legislature by January 15, 2008, regarding the workload and staffing requirements related to consumer complaints related to cable and video certificateholders. DOS is required to provide DACS with its workload requirements related to processing certificates of franchise authority, the number of applications filed, and the number of amendments to the original applications received.

On March 16, 2007, the Policy and Budget Council adopted six amendments to the bill. The amendments do the following:

- Address implementation issues related to the DOS
- Provide a process to address complaints alleging discrimination based on race or income.
- Require competitors to adhere to certain requirements of existing franchise agreements if an impairment of contracts is found.
- Provide that persons eligible for Lifeline service are automatically enrolled.
- Eliminate any future telephone rate rebalancing and repeal the authorization for future rate increases.
- In addition to the report due in 2009, requires OPPAGA to submit an additional report on the status of competition in 2014.

The staff analysis has been updated to incorporate the amendments described above.